

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Charles R. Norgle	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	07 C 6443	DATE	10/24/2011
CASE TITLE	U.S. ex rel. Tony Thomas (B-35507) vs. Terry McCann		

DOCKET ENTRY TEXT

Petitioner's request -- brought by way of a status report -- to continue to stay the instant 28 U.S.C. § 2254 habeas petition [16] is denied and the stay is lifted. Petitioner's additional request to file an amended petition is denied. Respondent shall file an answer or other response by December 16, 2011. The parties should move apace if there is a reasonable basis to proceed on this claim.



☒ [For further details see text below.]

Docketing to mail notices.
*Copy to judge/magistrate judge.

STATEMENT

Before the Court is Tony Thomas's ("Petitioner") status report, in which he requests that the Court continue to stay the instant 28 U.S.C. § 2254 habeas petition pending the resolution of a state civil complaint. For the following reasons, Petitioner's request is denied and the stay is lifted.

The Court takes the following facts from Petitioner's motion to stay [14]. Following a jury trial, Petitioner was convicted of first degree murder with a firearm and sentenced to seventy-five years in the Illinois Department of Corrections. The appellate court affirmed his conviction on June 17, 2004, and the Illinois Supreme Court denied his petition for leave to appeal ("PLA") on November 29, 2004. On April 27, 2005, Petitioner filed a state petition for post-conviction relief. The circuit court dismissed the petition on May 4, 2005, the appellate court affirmed the dismissal on February 7, 2007, and the Illinois Supreme Court denied the PLA on June 1, 2007.

Petitioner filed the instant 28 U.S.C. § 2254 habeas petition on November 14, 2007. On the same date, he filed a document -- titled "motion to stay the proceedings and hold in abeyance petition for writ of habeas corpus, and leave to amend petition at the conclusion of current state court proceedings" -- in which he asserted that he filed a successive post-conviction appeal based on newly discovered evidence. Petitioner asked the Court to stay his habeas case because he was unable, at the time, to assert all of the violations of his constitutional rights. The Court granted Petitioner's motion to stay on February 4, 2008.

The state circuit court dismissed the successive post-conviction petition on December 11, 2007, after which three years passed without action in the state case. The appellate court ultimately affirmed the dismissal on March 30, 2010, and the Illinois Supreme Court denied the PLA on November 24, 2010.

On June 7, 2011, Petitioner filed a motion requesting that the Court continue to stay his habeas petition, this time in light of a pending civil case that he filed in the Circuit Court of Cook County on November 5, 2008, No. 08-M-119918. In that case, Petitioner alleges that the State's Attorney and the Chicago Police Department are holding exculpatory evidence that "will possibly prove Petitioner's innocence." Mot. to Stay

STATEMENT

¶ 7.

On June 15, 2011, the Court granted Petitioner's motion to continue the stay and directed him to submit a report by September 15, 2011, informing the Court of the status of his state civil case. In his timely filed status report, Petitioner explains that the state court "refus[ed] to hear [his] case for want of prosecution [because he was not] present in court or having legal counsel present on [his] behalf." Status Report 2. Petitioner states that he "has no option but to file a notice of appeal, which petitioner will do after the prison comes [off] lockdown." *Id.* Petitioner asks that the Court continue to stay the instant habeas case, this time pending resolution of his state civil appeal, which he was yet to file at the time he submitted the status report.

Having reviewed Petitioner's status report along with the long history of this case, the Court declines to continue the stay. This case was filed in November 2007, and the Court has granted two motions to stay. The second motion to stay was granted in light of a pending civil case, which has since been dismissed for want of prosecution. Petitioner's representation that he plans to appeal a dismissed civil case does not provide a sufficient basis to continue to stay this case.

The stay in this case is therefore lifted. Petitioner's request to file an amended petition is denied. The Court notes for the record that the last (and only) action by Respondent was to file an appearance on February 14, 2008. Respondent shall file an answer or other response by December 16, 2011. The parties should move apace if there is a reasonable basis to proceed on this claim.

IT IS SO ORDERED.

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CLERK
U.S. DISTRICT COURT